

Depersia Mason Contractors, Inc. and Oakwood Enterprises, Inc. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5441

July 24, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and amended charge filed by the Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO, the General Counsel of the National Labor Relations Board issued a complaint against DePersia Mason Contractors, Inc. (Respondent DePersia) and Oakwood Enterprises, Inc. (Respondent Oakwood), collectively the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act.¹ On March 30, 1992, the Respondents filed an answer to the complaint. On June 16, 1992, the Respondents filed a withdrawal of answer to complaint.

On June 22, 1992, the General Counsel filed a Motion for Summary Judgment. On June 26, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board."

In the absence of good cause being shown for the failure to file a timely answer following withdrawal of the previously filed answer,² we grant

¹ On February 12, 1992, the Respondents filed a petition to dismiss the complaint because Respondent DePersia has filed for bankruptcy. On March 11, 1992, the Board denied this motion as Board proceedings are exempt from the automatic stay provisions of the Federal bankruptcy law. See *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983); *Jim Rogers Superior Insulation*, 296 NLRB No. 66 fn. 2 (Sept. 2, 1989) (not reported in Board volumes).

² The Respondents' withdrawal of their answer has the same effect as failure to file an answer. See *Academy of Scientific Hair Design*, 300 NLRB No. 92, slip op. at 2 (Nov. 23, 1990); *A. J. Shirk Roofing Co.*, 300

the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent DePersia and Respondent Oakwood, Connecticut corporations with an office and place of business in Glastonbury, Connecticut, are engaged as masonry contractors in the building and construction industry. Respondent DePersia and Respondent Oakwood have been affiliated business enterprises with common officers, ownership, directors, management, and supervision. They have formulated and administered a common labor policy and have shared common premises and facilities. The Respondents constitute a single integrated business enterprise and a single employer within the meaning of the Act.

During the 12-month period ending December 31, 1991, the Respondents, collectively and individually, in conducting their business operations, purchased and received at their Glastonbury facility products and goods valued in excess of \$50,000 directly from points outside the State of Connecticut. We find that the Respondents are an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Recognition

The following employees of the Respondents constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers employed by Respondents; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About June 4, 1986, Respondent DePersia entered into an "Acceptance of Agreements" with the Union whereby it accepted and approved the collective-bargaining agreement between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. effective June 1, 1984, and the collective-bargain-

NLRB No. 54, slip op. at 2 (Oct. 19, 1990); *Maislin Transport*, 274 NLRB 529 (1985).

ing agreement between the Union and the Connecticut Construction Industries Association, Inc. effective April 1, 1984, and agreed to be bound to such future agreements unless timely notice was given. Successor collective-bargaining agreements have continued to date, the most recent of which are effective by their terms for the period April 1, 1991, through March 31, 1993.

Respondent DePersia, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the employees in the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. For the period June 4, 1986, to March 31, 1993, based on the principles established in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), the Union has been, and is, the limited exclusive collective-bargaining representative of the unit.

B. Refusal to Bargain

Since on or about April 1, 1991, the Respondents, unilaterally and without the consent of the Union, have failed to continue in full force and effect all the terms and conditions of the agreements described above by failing to make the contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

The terms and conditions of the agreements which Respondents unilaterally and without the consent of the Union failed to continue in full force and effect are terms and conditions of employment of employees of the unit, and are mandatory subjects of bargaining. The Respondents engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the limited exclusive representative of the Respondents' employees with respect to such acts and conduct.

CONCLUSIONS OF LAW

By their failure on and after April 1, 1991, to continue in full force and effect all the terms and conditions of the collective-bargaining agreements, by making contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund, the Respondents have engaged in unfair labor practices affecting commerce within

the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondents to make all contractually required payments they failed to make since June 1, 1991.³ The Respondents shall also make their employees whole for any losses attributable to their failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondents, DePersia Mason Contractors, Inc. and Oakwood Enterprises, Inc., Glastonbury, Connecticut, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, as the limited exclusive representative of their employees in the bargaining unit, by failing to make contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions of the collective-bargaining agreements with the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All laborers employed by Respondents; but excluding all other employees, and all guards,

³ Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondents must pay any additional amounts into the benefit funds in order to satisfy our "make whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

professional employees and supervisors as defined in the Act.

(b) Make all contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund as provided in the remedy section of this decision.

(c) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondents' failure to make contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(f) Post at their facility in Glastonbury, Connecticut, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO as the limited exclusive representative of the employees in the bargaining unit.

WE WILL NOT fail or refuse to continue in full force and effect all the terms of our agreements by failing to make contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all the terms and conditions of our collective-bargaining agreements with the Union.

WE WILL make all contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

DEPERSIA MASONRY CONTRACTORS,
INC. AND OAKWOOD ENTERPRISES,
INC.